



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200941035

Uniform Issue List: 408.03-00

JUL 13 2009

SE.T. EP. RA: T4

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Legend:

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|-------------------------|--|
| Taxpayer A | = XXXXXXXXXXXXXXXXXXXX |
| Individual B | = XXXXXXXXXXXXXXXXXXXX |
| IRA X | = XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX |
| Account F | = XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX |
| Amount D | = XXXXXXXXXXXXXXXXXXXX |
| Financial Institution R | = XXXXXXXXXXXXXXXXXXXX |
| Company C | = XXXXXXXXXXXXXXXXXXXX |
| Date 1 | = XXXXXXXXXXXXXXXXXXXX |
| Date 2 | = XXXXXXXXXXXXXXXXXXXX |
| Date 3 | = XXXXXXXXXXXXXXXXXXXX |
| Date 4 | = XXXXXXXXXXXXXXXXXXXX |

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Dear XXXXXXXXXX:

This is in response to your request which was received by the Internal Revenue Service on April 28, 2009, as supplemented by correspondence dated June 18, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of Taxpayer A's request.

Taxpayer A, age 58, represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Individual B of Financial Institution R which resulted in Amount D being deposited into Account F, a non-IRA account, where it still remains. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A represents that on Date 1, a 5-year certificate of deposit held by IRA X, which was maintained at Company C, matured. Upon the advice of Individual B, a financial advisor with Financial Institution R, Taxpayer A requested a distribution of Amount D from IRA X. On Date 2, Company C mailed the check totaling Amount D to Taxpayer A which she then mailed to Individual B. Taxpayer A states that she instructed Individual B to deposit Amount D into a pre-existing IRA maintained at Financial Institution R. On Date 3, Individual B received the check totaling Amount D from Taxpayer A and erroneously deposited it into a non-IRA account (Account F).

In a letter dated June 8, 2009, Individual B states that on Date 3, he received a check from Taxpayer A in Amount D. He states further that Individual A instructed him to deposit Amount D into an IRA at Financial Institution R. When Individual B instructed his office cashier to deposit Amount D into Taxpayer A's account he gave the cashier the account number of Taxpayer A's non-IRA account instead of the account number of her IRA. Individual B admits that the deposit into the wrong account was an error on his part. Taxpayer A represents that she did not discover the error until Date 4.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in

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gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due

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to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that her failure to accomplish a timely rollover was due to a mistake made by Individual B of Financial Institution R, which resulted in Amount D being deposited into Account F, a non-IRA account.

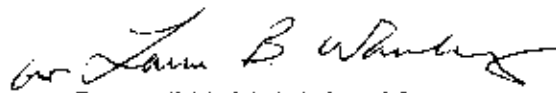
Therefore, pursuant to section 408(d)(3)(i) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXXXXX, ID Number XXXXXXXX, at XXXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose